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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,036	09/29/2003	Jeff R. Justis	4002-3415/PC977.00	2570
52196	7590	12/11/2006	EXAMINER	
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			WOODALL, NICHOLAS W	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/674,036

Applicant(s)

JUSTIS, JEFF R.

Examiner

Nicholas Woodall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 17-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16 is/are rejected.
- 7) ☒ Claim(s) 8-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/29/2003</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I claims 1-6 in the reply filed on October 31<sup>st</sup>, 2006 is acknowledged.
2. Claims 17-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 31<sup>st</sup>, 2006.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 111 and 2424 are not shown in the figures.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference numbers 64 and 239' are not listed in the specification.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "141" and "142" have both been used to designate the mounting axis. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheets should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top

margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 16 recites the limitation "said clamp assembly" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley (U.S. Publication 2002/0161368) in view of Rubens (3,299,883).

Regarding claim 1, Foley discloses a system comprising a pair of anchor extensions including a distal end and a proximal end. The distal ends of the anchor extension form an alignment axis in between each other. The system further comprises

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a guide instrument that is mountable adjacent the proximal end of the anchor extensions. Regarding claim 2, Foley discloses a system further comprising an inserter that includes a proximal end pivotally mountable adjacent the proximal ends of the anchor extensions and a distal portion extending transversely to the proximal portion of the inserter. The distal portion of the inserter is capable of being moveable about the proximal ends of the anchor extension by pivoting about the proximal portion of the inserter. Regarding claim 3, Foley discloses a system further comprising a connecting element releasably connectable to the distal portion of the inserter. The connecting element is capable of being positioned along the alignment axis with the inserter. Regarding claim 4, Foley discloses a system wherein the connecting element is a rod. Regarding claim 5, Foley discloses a device further comprising a pair of anchors. The anchors further include a proximal receiver portion defining a passageway that can be aligned with the alignment axis. Regarding claim 6, Foley discloses a system wherein the anchors are multi-axial screws. Regarding claim 7, Foley discloses a system wherein the guide instrument includes mounting assemblies that are capable of being attached and removed from the anchor extensions. Regarding claims 1 and 7, Foley fails to disclose a guide instrument comprising a guide member defining a guide axis. Rubens teaches a device comprising a guide instrument further including a guide member defining a guide axis in order to simultaneously insert and remove attached cannulae (column 3 lines 10-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Foley

with a guide instrument further including a guide member defining a guide axis in view of Rubens in order to simultaneously insert and remove attached cannulae.

Rubens discloses a device comprising a guide instrument (parts 33, 34, 35, 44, 45, and 46) that is used to guide and align a pair of cannulae that are pivotally connected to the guiding instrument. Reference number 46 is capable of being a guide member that defines a guide axis that would intersect an alignment axis when combined with the device disclosed in Foley. The guide member is also capable of moving relative to the proximal ends of the cannulae, since the entire guide instrument is capable of moving relative to the proximal ends of the cannulae. Therefore, the guide member would be capable of moving relative to the proximal ends of the anchor extensions and still define a guide axis that intersects an alignment axis when combined with the device disclosed in Foley.

***Allowable Subject Matter***

11. Claims 7-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER